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scheduled later or states that it does not wish to have an agency conference.

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(44 U.S.C. 3506)

[44 FR 35928, June 19, 1979, as amended at 47 FR 746, Jan. 7, 1982. Redesignated and amended by Amdt. 1, 47 FR 14137, Apr. 2, 1982; 64 FR 73383, Dec. 30, 1999; 65 FR 47833, Aug. 4, 2000]

§ 253.8 Administrative disqualification procedures for intentional program violation.

(a) *What is an intentional program violation?* An intentional program violation is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

(1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or

(2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities.

(b) *What are the disqualification penalties for an intentional program violation?* Household members determined by the State agency to have committed an intentional program violation will be ineligible to participate in the program:

(1) For a period of 12 months for the first violation;

(2) For a period of 24 months for the second violation; and

(3) Permanently for the third violation.

(c) *Who can be disqualified?* Only the household member determined to have committed the intentional program violation can be disqualified. However, the disqualification may affect the eligibility of the household as a whole, as addressed under paragraphs (e)(5) and (h) of this section.

(d) *Can the disqualification be appealed?* Household members determined by the State agency to have committed an intentional program violation may appeal the disqualification, as provided under § 253.7(h)(1).

(e) *What are the State agency's responsibilities?* (1) Each State agency must implement administrative disqualification procedures for intentional pro-

gram violations that conform to this section.

(2) The State agency must inform households in writing of the disqualification penalties for intentional program violations each time they apply for benefits, including recertifications. This notice must also advise households that an intentional program violation may be referred to authorities for prosecution.

(3) The State agency must attempt to substantiate all suspected cases of intentional program violation. An intentional program violation is considered to be substantiated when the State agency has clear and convincing evidence demonstrating that a household member committed one or more acts of intentional program violation, as defined in paragraph (a) of this section.

(4) Within 10 days of substantiating that a household member has committed an intentional program violation, the State agency must provide the household member with a notice of disqualification, as described in paragraph (f) of this section. A notice must still be issued in instances where the household member is not currently eligible or participating in the program.

(5) The State agency must advise any remaining household members if the household's benefits will change or if the household will no longer be eligible as a result of the disqualification.

(6) The State agency must provide the household member to be disqualified with an opportunity to appeal the disqualification through a fair hearing, as required by § 253.7(h).

(7) The State agency must refer all substantiated cases of intentional program violations to Tribal, Federal, State, or local authorities for prosecution under applicable statutes. However, a State agency that has conferred with its legal counsel and prosecutors to determine the criteria for acceptance for possible prosecution is not required to refer cases that do not meet the prosecutors' criteria.

(8) The State agency must establish claims, and pursue collection as appropriate, on all substantiated cases of intentional program violation in accordance with § 253.9.

(f) *What are the requirements for the notice of disqualification?* (1) Within 10

days of substantiating the intentional program violation, the State agency must issue to the household member a notice of disqualification. The notice must allow an advance notice period of at least 10 days. The disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household member requests a fair hearing. A notice must still be issued in instances where the household member is not currently eligible or participating in the program.

(2) The notice must conform to the requirements of §253.7(b)(3)(iii)(C) for notices of adverse action.

(g) *What are the appeal procedures for administrative disqualifications?*—(1) *Appeal rights.* The household member has the right to request a fair hearing to appeal the disqualification in accordance with the procedures at §253.7(h).

(2) *Notification of hearing.* The State agency must provide the household member with a notification of the time and place of the fair hearing as described in §253.7(h)(7). The notice must also include:

(i) A warning that if the household member fails to appear at the hearing, the hearing decision will be based solely on the information provided by the State agency; and

(ii) A statement that the hearing does not prevent the Tribal, Federal, State, or local government from prosecuting the household member in a civil or criminal court action, or from collecting any overissuance(s).

(h) *What are the procedures for applying disqualification penalties?* (1) If the household member did not request a fair hearing, the disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period of the notice of adverse action. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (that is, 12 months, 24 months, or permanent) specified in the notice of

disqualification. The State agency must advise any remaining household members if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(2) If the household member requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of commodities that follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (that is, 12 months, 24 months, or permanent) specified in the notice of disqualification. No further administrative appeal procedure exists after an adverse fair hearing decision. The decision by a fair hearing official is binding on the State agency. The household member, however, may seek relief in a court having appropriate jurisdiction. As provided under §253.7(h)(11)(iii)(B), the State agency must advise any remaining household members if the household's benefits will change, or if the household is no longer eligible as a result of the disqualification.

(3) Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (that is, 12 months; 24 months; or permanent). Changes in the eligibility of the disqualified household member's household will not interrupt or shorten the disqualification period.

(4) The same act of intentional program violation continued over a period of time will not be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

(5) If the case was referred for Tribal, Federal, State, or local prosecution

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and the court of appropriate jurisdiction imposed a disqualification penalty, the State agency must follow the court order.

[64 FR 73384, Dec. 30, 1999]

§ 253.9 Claims against households.

(a) *What are the procedures for establishing a claim against a household for an overissuance?* (1) The State agency must establish a claim against any household that has received more Food Distribution Program commodities than it was entitled to receive.

(2) The procedures for establishing and collecting claims against households are specified in FNS Handbook 501, The Food Distribution Program on Indian Reservations.

(b) *Who is responsible for repaying a household overissuance claim?* (1) All adult household members are jointly and separately liable for the repayment of the value of any overissuance of Food Distribution Program benefits to the household.

(2) Responsibility for repayment continues even in instances where the household becomes ineligible or is not participating in the program.

[64 FR 73385, Dec. 30, 1999]

§ 253.10 Commodity control, storage and distribution.

(a) *Control and accountability.* The State agency shall be responsible for the issuance of commodities to households and the control of and accountability for the commodities upon its acceptance of the commodities at time and place of delivery.

(b) *Commodity inventories.* The State agency shall, in cooperation with the FNS Regional office, develop an appropriate procedure for determining and monitoring the level of commodity inventories at central commodity storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper levels taking into consideration, among other factors, household preferences and the historical and projected volume of distribution at each site. The procedures shall provide that commodity inventories at each central storage facility and each local distribution point are not in excess, but are

adequate for, an uninterrupted distribution of commodities.

(c) *Storage facilities and practices.* The State agency shall as a minimum ensure that:

(1) Adequate and appropriate storage facilities are maintained. The facilities shall be clean and neat and safe-guarded against theft, damage, insects, rodents and other pests.

(2) Department recommended dunnage, stacking and ventilation methods are followed.

(3) Commodities are stacked in a manner which facilitates an accurate inventory.

(4) Commodities are issued on a first-in, first-out basis.

(5) Commodities held in storage for a protracted period of time are re-inspected prior to issuance.

(6) Out-of-condition commodities are disposed of in accordance with Department approved methods.

(7) Notification is provided to certified households of the location of distribution sites and days and hours of distribution.

(8) An adequate supply of commodities which are available from the Department is on hand at all distribution sites.

(9) Sufficient distribution sites, either stationary or mobile, are geographically located or routed in relation to population density of eligible households.

(10) Days and hours of distribution are sufficient for caseload size and convenience.

(11) Households are advised they may refuse any commodity not desired, even if the commodities are pre-packaged by household size.

(12) Emergency issuance of commodities will be made to households certified for expedited service in accordance with the provisions of § 253.7(a)(9).

(13) Eligible households or authorized representatives are identified prior to the issuance of commodities.

(14) Authorized signatures are obtained for commodities issued and the issue date recorded.

(15) Posters are conspicuously displayed advising program participants to accept only those commodities, and in such quantities, as will be consumed by them.